

SEP 11 1981

RENE C. DAVIDSON, County Clerk
By Peggy Waller Deputy

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7
8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF ALAMEDA

10
11 JOSEPH BREEN,

12 Plaintiff,

13 vs.

14 BRUSH WELLMAN, INC., NATIONAL BERYLLIA
15 CORPORATION, GTE PRODUCTS CORPORATION,
16 WESGO DIVISION, FIRST DOE through
17 TWO HUNDRED TENTH DOE, Inclusive,

18 Defendants.

) NO. 573999-2

) FIRST AMENDED
) COMPLAINT FOR PERSONAL
) INJURIES; STRICT
) LIABILITY; NEGLIGENCE;
) FRAUD AND CONSPIRACY

19 Plaintiff JOSEPH BREEN alleges:

20 FIRST CAUSE OF ACTION

21 I.

22 Plaintiff JOSEPH BREEN for and on behalf of himself, brings
23 this action on his own behalf. The masculine form as used in
24 this complaint, if applicable as shown by the context hereof,
25 applies to a female person or a corporation.

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II.

Plaintiff does not know the true names and capacities, whether corporate, associate or individual of defendants sued herein as FIRST DOE through TWO HUNDRED TENTH DOE, inclusive, each of them, and for that reason prays leave to insert the names and capacities of said defendants when the same are ascertained. Plaintiff is informed and believes and therefore alleges that each of the defendants designated herein as a DOE negligently, intentionally and/or strictly liable or responsible in some manner for the events and happenings herein referred to and proximately caused injury and damages to plaintiff thereby herein alleged.

III.

At all times herein mentioned, each of the defendants was the agent and employee of each of the remaining defendants, and was at all times acting within the purpose and scope of said agency and employment, and each defendant has ratified and approved the acts of the remaining defendants.

IV.

Defendants BRUSH WELLMAN, INC., NATIONAL BERYLLIA CORPORATION, GTE PRODUCTS CORPORATION, WESGO DIVISION, FIRST DOE through FIFTIETH DOE, inclusive, were at all times herein and still are corporations authorized to do and doing business in the State of California.

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V.

At all times herein mentioned defendants, and each of them, were engaged in the business of mining, manufacturing, assembling, supplying, packaging and/or labelling beryllium containing compounds for sale to and use by the members of the general public as well as to other parties for use of the said products.

VI.

At all times herein mentioned, defendants FIFTY FIRST DOE through TWO HUNDRED TENTH DOE were Officers and Directors of named defendants herein and FIRST DOE through FIFTIETH DOE.

VII.

The defendants, and each of them, acting through their agents, servants and/or employees, cause and have caused in the past, certain beryllium containing compounds to be placed in the stream of interstate commerce with the result that said products and materials came into use by plaintiff.

VIII.

Plaintiff JOSEPH BREEN was an employee of National Beryllia Corporation of Haskell, New Jersey for the period of 1959 to 1961 and an employee of Varian Associates, Binac Division, located in San Carlos, California for the period of 1979 to 1981. During the course of his employment as a ceramics worker for the above mentioned employers, plaintiff was exposed to the beryllium containing compounds processed, imported, converted, compounded, supplied and/or sold by the defendants, and each of them.

IX.

From 1959 to 1961 plaintiff was exposed at National Beryllia Corporation to beryllium containing compounds manufactured and placed in the stream of interstate commerce by National Beryllia Corporation for purchase by the general public, and was also exposed to beryllium containing compounds from the other defendants named herein.

X.

From 1979 to 1981 plaintiff was exposed at Varian Associates, Eimac Division to beryllium containing compounds manufactured and placed in the stream of interstate commerce by Varian Associates, Eimac Division for purchase by the general public and was exposed to beryllium containing compounds purchased by Varian Associates, Eimac Division, from the said defendants, including National Beryllia Corporation.

XI.

The above described exposures directly and proximately caused plaintiff to develop an illness known and designated as berylliosis and other illnesses and disabilities whose relationship to beryllium is as yet unknown to plaintiff herein, the pathological effect of which was without noticeable trauma and was unknown to plaintiff.

XII.

The illness and disability of plaintiff is the direct and proximate result of the negligence of the defendants, and each of them, in that they produced, sold and otherwise put into the

1 stream of interstate commerce, the foregoing materials which the
2 said defendants, and each of them, knew, or in the exercise of
3 ordinary care should have known, were deleterious, poisonous, an
4 highly harmful to plaintiff's health.

5
6 XIII.

7 Plaintiff exercising reasonable diligence, discovered the
8 aforealleged conduct, misconduct and culpability of defendants,
9 and each of them, on or about July 7, 1982, when he received a
10 diagnosis of berylliosis. Plaintiff could not have discovered
11 such condition sooner because such condition was brought about
12 without noticeable trauma until it had advanced to such a point
13 that diagnosis could be made; such diagnosis required the
14 services of an expert and plaintiff did not possess such
15 expertise so that he could not know in the exercise of reasonable
16 care of the cause of his injury until such time as he was
17 diagnosed and advised. Plaintiff could not know until such
18 advice of the culpability of the defendants, and each of them.

19 XIV.

20 As a direct and proximate result of the conduct of the
21 defendants, and each of them, plaintiff suffered and sustained
22 prolonged pain and suffering, the necessity for additional
23 treatment, injuries including, but not limited to, berylliosis,
24 severe shock to his nervous system, and other injuries, the exact
25 extent of which are presently unknown to plaintiff.

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XV.

By reason of the aforesaid premises, it was necessary for plaintiff to engage the services of physicians, surgeons, and hospitals; plaintiff does not know the reasonable value of said services which have been or may be reasonably required in the future and requests leave to amend this complaint to insert said sum when it is ascertained.

XVI.

By reason of the aforesaid premises, plaintiff was unable to follow his normal or any gainful occupation for certain periods after the date of said events, and plaintiff will remain disabled for an indefinite future time; plaintiff does not now know the value of the employment which has been and may be lost to him in the future, and request leave to amend this complaint to insert the reasonable value thereof when such is ascertainable.

XVII.

By reason of the aforesaid negligence of defendants, and each of them, plaintiff has been damaged to his health, strength, and activity in an amount in excess of \$15,000.00 in addition to special damages herein alleged.

WHEREFORE, plaintiff prays judgment as is hereinafter set forth.

SECOND CAUSE OF ACTION

AS AND FOR A SECOND CAUSE OF ACTION, plaintiff complains of defendants, and each of them, and alleges:

I.

Plaintiff by this reference hereby incorporates and makes a part hereof as though fully set forth herein at length all and singular the allegations contained in the First Cause of Action herein, excepting therefrom allegations pertaining to negligence

II.

The defendants, and each of them, impliedly warranted that the said materials were of good and merchantable quality and fit for their intended use.

III.

The implied warranty made by the defendants, and each of them, that the beryllium containing compounds were of good and merchantable quality for the particular intended use was breached in that certain harmful, poisonous and deleterious particles were given off into the atmosphere wherein plaintiff and others in his position carried out their duties as employees working with such materials and other related materials and in that plaintiff came into contact with the beryllium containing compounds as he and others in his position carried out their duties as employees working with such materials and other related materials.

IV.

As a direct and proximate result of the breach of implied warranty of good and merchantable quality and fitness for the particular intended use, plaintiff developed an illness, to wit: berylliosis or other beryllium related illnesses which cause great disability, as previously set forth.

V.

By reason of the premises, plaintiff has been damaged to his health, strength, and activity in an amount in excess of \$15,000.00 in addition to special damages herein alleged.

WHEREFORE, plaintiff prays judgment as is hereinafter set forth.

THIRD CAUSE OF ACTION

AS AND FOR A THIRD CAUSE OF ACTION, plaintiff complains of defendants, and each of them, and alleges:

I.

Plaintiff by this reference hereby incorporates and makes a part hereof as though fully set forth herein at length all and singular the allegations contained in the First Cause of Action herein, excepting therefrom allegations pertaining to negligence.

II.

At all times herein mentioned, National Beryllia Corporation and Varian Associates, Elmac Division purchased from defendants, and each of them, beryllium containing compounds hereinafter referred to as the defective and improperly labeled products.

III.

Defendants, and each of them, knew that the aforementioned products would be used without inspection for defects by the user thereof.

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1 IV.

2 At all times mentioned herein, plaintiff was unaware of the
3 dangerous nature of the aforementioned products.

4 V.

5 At all times mentioned herein, defendants, and each of them,
6 were aware of the dangerous and defective nature of the
7 aforementioned products.

8 VI.

9 The aforementioned products were used by plaintiff in the
10 manner for which they were intended.

11 VII.

12 As a direct and proximate result of the foregoing conduct,
13 plaintiff developed certain illnesses, to wit: berylliosis or
14 other beryllium related illnesses which caused great disability
15 as previously set forth.

16 VIII.

17 As a proximate result of defects in these aforementioned
18 materials, plaintiff has been generally damaged as is more fully
19 set forth herein and in addition has sustained special damages
20 hereinabove alleged.

21 IX.

22 The foregoing acts of the defendants, and each of them, were
23 done wantonly, willfully, oppressively and in conscious disregard
24 for the safety of plaintiff herein, by the defendants, and each
25 of them, in that the defendants and each of them, prior to and at
26 the time of the sale of the aforementioned products to the above

1 mentioned employers of plaintiff, knew that the foregoing
2 materials were dangerous when inhaled or when contacted, gave no
3 warning at all on the said materials or on their packaging
4 warning of the dangerous nature thereof, knowing that the said
5 materials would be used by plaintiff and others who had no
6 knowledge of the dangerous and hazardous nature thereof and
7 plaintiff is entitled to punitive damages hereunder.

8 WHEREFORE, plaintiff prays judgment as is hereinafter set
9 forth.

10
11 FOURTH CAUSE OF ACTION

12 AS AND FOR A FOURTH CAUSE OF ACTION, plaintiff complains of
13 defendants and each of them, and alleges:

14 I.

15 Plaintiff by this reference hereby incorporates and makes a
16 part hereof as though fully set forth herein at length all and
17 singular the allegations contained in the First Cause of Action
18 herein, excepting therefrom allegations pertaining to negligence.

19 II.

20 At all times pertinent hereto, the defendants, and each of
21 them, owed plaintiff a duty, as provided for in Section 1708
22 through 1710 of the Civil Code of the State of California, to
23 abstain from injuring the person, property or rights of the
24 plaintiff. In violation of that duty, the defendants, and each
25 of them, did do the acts and omissions, when a duty to act was
26 imposed, as set forth herein, thereby proximately causing injury

1 to the plaintiff as is more fully set forth herein. Such acts
2 and omissions consisted of acts falling within Section 1710, and
3 more specifically were suggestions of fact which were not true
4 and which the defendants did not believe to be true, assertions
5 of fact of that which was not true, which the defendants had no
6 reasonable ground for believing it to be true, and the
7 suppression of fact when a duty existed to disclose it, all as
8 are more fully set forth herein, and the violation of which as to
9 any one such item gave rise to a cause of action for violation of
10 the rights of the plaintiff as provided for in the aforementioned
11 code sections.

12 III.

13 Since the 1930's, the defendants, and each of them, have
14 known and have been possessed of the true facts consisting of
15 medical and scientific data and other knowledge which clearly
16 indicated that the materials and products referred to herein were
17 and are hazardous to the health and safety of the plaintiff, and
18 others in plaintiff's position working in close proximity with
19 such materials and have known of the dangerous propensities of
20 other of the aforementioned materials and products since before
21 that time and with intent to deceive plaintiff, and others in his
22 position and with intent that he and such others should be and
23 remain ignorant of such facts and with intent to induce plaintiff
24 and such others to alter his and their positions to his and their
25 injury and/or risk and in order to gain advantages did do the
26 following acts:

- 1 (a) Defendants, and each of them, did not label any of
2 the aforementioned beryllium containing compounds as
3 to the hazards of such materials and products to the
4 health and safety of plaintiff and others in
5 plaintiff's position working in close proximity with
6 such materials when the knowledge of such hazards was
7 existing and known to defendants, and each of them,
8 since the 1930's. By not labelling such materials as
9 to their said hazards defendants, and each of them,
10 caused to be suggested as a fact to plaintiff and
11 plaintiff's employer the purchasers of the
12 aforementioned materials to workers such information
13 to be dissented in a manner which would give general
14 notice to the public and knowledge of the hazardous
15 nature thereof when defendants were bound to disclose
16 such information;
- 17 (b) Defendants, and each of them, suppressed information
18 relating to the danger of use of the aforementioned
19 materials by requesting the suppression of
20 information to the plaintiff and the general public
21 concerning the dangerous nature of the aforementioned
22 materials to workers by not allowing such information
23 to be disseminated in a manner which would give
24 general notice to the public and knowledge of the
25 hazardous nature thereof when defendants were bound
26 to disclose such information;

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- (c) Defendants, and each of them, sold the aforementioned products and materials to plaintiff's employers and others without advising such employers and others of the dangers of use of such materials to persons working in close proximity thereto, when defendants knew of such dangers, as set forth herein, and, as set forth above, had a duty to disclose such dangers. Thereby, defendants caused to be positively asserted to plaintiff's employers of that which was not true and which defendants had no reasonable ground for believing it to be true, in a manner not warranted by the information possessed by said defendants, and each of them, of that which was and is not true, to wit, that it was safe for plaintiff to work in close proximity to such materials;
- (d) Defendants, and each of them, suppressed from everyone, including plaintiff and plaintiff's place of work, and continue to suppress, medical and scientific data and knowledge of the results of studies, when they were bound to disclose it, and causing plaintiff to be and remain ignorant thereof;
- (e) Commencing in the 1930s, the defendants, and each of them, knew and possessed medical and scientific information of the connection between exposure to beryllium containing compounds and berylliosis. Thereby, defendants suggested as a fact that which is

1 not true and disseminated other facts likely to
2 mislead plaintiff and plaintiff's place of work and
3 which did mislead them for want of communication of
4 true facts which consisted of the aforescribed
5 medical and scientific data and other knowledge by
6 not giving plaintiff or plaintiff's employer the true
7 facts concerning such knowledge of danger, when
8 defendants were bound to disclose it;

- 9 (f) Fail to warn plaintiff and plaintiff's employer of
10 the nature of the said materials, to wit: dangerous
11 when inhaled, causing pathological effects without
12 noticeable trauma, when possessed with knowledge
13 that such material was dangerous and a threat to the
14 health of persons coming into contact therewith and
15 under a duty to disclose it;
- 16 (g) Fail to provide plaintiff with information concerning
17 adequate protective devices for use with the said
18 products of the defendants, and each of them, when
19 they knew that such protective measures were
20 necessary, when they were under a duty to disclose
21 such information, and if not advised as to use would
22 result in injury to the plaintiff and others using
23 such materials;
- 24 (h) Conceal from plaintiff the true nature of the
25 industrial exposure of plaintiff, the fact that they
26 and each of them, knew that plaintiff and anyone

1 similarly situated, upon inhaling beryllium
2 containing compounds would, in time develop
3 irreversible conditions of berylliosis, and such
4 person would immediately be in not good health, the
5 fact that he had in fact been exposed to harmful
6 materials and the fact that the materials to which he
7 was exposed would cause pathological effects without
8 noticeable trauma, when under a duty to and bound to
9 disclose it; and

- 10 (i) Fail to provide information to the public at large
11 and buyers, users and physicians employed by
12 plaintiff and plaintiff's employers for the purpose
13 of conducting physical examinations of plaintiff and
14 others working in contact with beryllium containing
15 compounds as to the true nature of the hazards of
16 beryllium, in order for such physicians to diagnose,
17 and treat persons coming into contact with beryllium,
18 in that the materials to which plaintiff had been
19 exposed would cause pathological effects without
20 noticeable trauma, when under a duty to supply such
21 information and such failure is likely to mislead for
22 want of communication of such facts.

23
24 IV.

25 Each of the foregoing acts, suggestions, assertions and
26 forebearances to act when a duty existed to act, the said

1 defendants, and each of them, having such knowledge, knowing the
2 plaintiff did not and would not breathe such material innocently,
3 was done falsely and fraudulently and with full intent to induce
4 plaintiff to work in a dangerous environment and to cause
5 plaintiff to remain unaware of the true facts, all in violation
6 of Section 1710 of the Civil Code of the State of California.

7 V.

8 Plaintiff relied upon the said acts, suggestions, assertions
9 and forbearances; had plaintiff known the true facts, he would
10 not have continued to work in the said environment. By reason of
11 plaintiff's exposure from 1959 to 1961 to beryllium containing
12 compounds manufactured and placed in the stream of interstate
13 commerce by National Beryllia Corporation, plaintiff's condition
14 was aggravated to a degree which would have been prevented had
15 defendant National Beryllia Corporation disclosed to plaintiff
16 the true nature of the hazards of beryllium. Plaintiff's
17 condition was further aggravated by defendant National Beryllia
18 Corporation in that, had plaintiff been warned of the true nature
19 of the hazards of beryllium exposure during the period 1959 to
20 1961 or at any time prior to 1979, he would have avoided the
21 exposure to beryllium that occurred from 1979 to 1981, at Varian
22 Associates, Eimac Division.

23 VI.

24 By reason of the premises, plaintiff was damaged in his
25 health, strength and activity in addition to special damages
26 hereinabove alleged.

VII.

Each of the said acts and forbearances to act were done falsely, fraudulently and maliciously, and plaintiff is entitled to exemplary and punitive damages. The foregoing acts of the defendants, and each of them, were done wantonly; willfully, oppressively and in conscious disregard for the safety of plaintiff herein by the defendants, and each of them, in that the defendants, and each of them, prior to and at the time of the sale of the aforementioned products to plaintiff's employer knew that the foregoing materials were dangerous when inhaled, gave no warning at all and in no way placed sufficient warnings on the said materials or on their packaging warning of the dangerous nature thereof, knowing that the said materials would be used by plaintiff and others who had no knowledge of the dangerous and hazardous nature thereof and plaintiff is entitled to punitive damages hereunder.

VIII.

Plaintiff had no knowledge of the foregoing acts at the time when they were committed, is not charged with knowledge or inquiry thereof and only learned of such facts after July 7, 1982, when he was diagnosed with berylliosis. Plaintiff could not have discovered such condition sooner because such condition was brought about without noticeable trauma until it had advanced to such a point that diagnosis could be made; such diagnosis required the services of an expert and plaintiff did not possess such expertise so that he could not know in the exercise of

1 reasonable care of the cause of his injury until such time as he
2 was diagnosed and advised. Plaintiff could not know until such
3 advice of the culpability of the defendants, and each of them.

4 WHEREFORE, plaintiff prays judgment as is hereinafter set
5 forth.

6
7 FIFTH CAUSE OF ACTION

8 AS AND FOR A FIFTH CAUSE OF ACTION, plaintiff complains of
9 defendants and each of them, and alleges:

10 I.

11 Plaintiff incorporates by reference as though fully set
12 forth herein all the allegations of the First through Third
13 Causes of Action herein.

14 II.

15 Defendants BRUSH WELLMAN, INC., NATIONAL BERYLLIA
16 CORPORATION, GTE PRODUCTS CORPORATION, WESGO DIVISION, FIRST DOE
17 through FIFTIETH DOE produced a substantial share of the market
18 for beryllium, which product was defective as alleged herein,
19 during the time in question. Defendants, and each of them,
20 produced beryllium containing compounds from identical formulas
21 and the producer of the beryllium which caused plaintiff's
22 injuries cannot be identified through no fault of plaintiff.

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1 WHEREFORE, plaintiff prays judgment as follows:

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3 1. General damages in an amount in excess of \$15,000.00 in
4 accordance with the proof;

5 2. Damages for fraud and conspiracy in the sum of
6 \$1,000,000.00;

7 3. Punitive and exemplary damages in the sum of
8 \$10,000,000.00;

9 4. Special damages in accordance with the proof;

10 5. Pre-judgment interest and post-judgment interest in
11 accordance with law;

12 6. Costs of suit; and

13 7. Such other and further relief as the Court deems just
14 and proper in the premises.

15 DATED: September 5, 1984

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18 STEVEN KAZAN
A Law Corporation

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20 
21 STEVEN KAZAN

22 Attorney for Plaintiff
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